

REMARKS

In response to the PTO Communication dated May 5, 2009, Applicant submits initially that contrary to the Examiner's indication, 37 CFR 1.111(b) and MPEP 714.02 do not state that a request to hold a matter in abeyance may *only* be made in response to an objection or requirements as to form. Rather, they state that a request to hold a matter in abeyance may be made in response to an objection or requirements as to form; this language does not exclude other issues from being held in abeyance. Further, a provisional rejection is not an actual rejection, but rather is only a potential rejection, and thus MPEP 804 I.B. states that the merits of such a provisional rejection "can" be addressed by both the applicant and the examiner without waiting for the first patent to issue (MPEP 804 I.B. does not state that the merits of such a provisional rejection "must" be addressed by both the applicant and the examiner without waiting for the first patent to issue).

Nevertheless, to advance the prosecution of this application, Applicant submits herewith a terminal disclaimer to obviate the provisional rejection obviousness-type double patenting rejection. Accordingly, Applicant submits that the provisional obviousness-type double patenting rejection has been overcome, and withdrawal of this provisional rejection is respectfully requested.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the

RESPONSE
U.S. Application No.: 10/552,685

Attorney Docket No.: Q90825

Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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